



Commonwealth of Kentucky

CONTRACT

IMPORTANT

Show Doc ID number on all packages, invoices and correspondence.

Doc Description: 09 Adanta Group First Steps POE Program Federal Stimulus

Doc ID No: PON2 728 0800007322 2

Procurement Folder: 1047463

Procurement Type: Memorandum of Agreement

Administered By: FELICIA BIGGERSTAFF

Cited Authority: FAP111-44-00

Telephone: 502-564-6663

Issued By: FELICIA BIGGERSTAFF

Reason For Modification: Previous amt: \$243,000

Increase amt: \$17,500

New Total Amt: \$260,500

This modification is made to add the American Recovery and Reinvestment Act (ARRA) funds to commodity line two which shall be a one time start up awards cost for recruiting, hiring and setting up of new positions in order to be ready for the model change in the program structure that will be effective on July 1, 2009.

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ADANTA GROUP

259 PARKERS MILL RD

SOMERSET KY 42501
US

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	POE Services		0.00		0.00000	243,000.00	243,000.00

Extended Description

Purpose - To develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families. Point of Entry, Child Find, Public Awareness and Initial Service Coordination in the Lake Cumberland Area Development District.

Adanta Group Contact - Cathy Epperson

Source of Funds - General Funds
KRS 200.560 to KRS 200.676

Contract Period is July 1, 2008 through June 30, 2009

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502324
CHFS DPH ADULT & CHILD HEALTH
275 E MAIN ST HS2W-A

FRANKFORT KY 40601
US

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Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
2	ARRA Funds		0.00		0.00000	17,500.00	17,500.00

Extended Description

Mod 1 - 5/5/09 American Recovery and Reinvestment Act (ARRA) funds shall be a one time start up awards cost for recruiting, hiring and setting up of new positions in order to be ready for the model change in the program structure that will be effective on July 1, 2009.

Federal Funds - CFDA # 84.181

B I L T O	502324	S H I P T O	
	CHFS DPH ADULT & CHILD HEALTH		
	275 E MAIN ST HS2W-A		
	FRANKFORT KY 40601 US		

Total Order Amount:	260,500.00
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Approvals:

This Contract is subject to the terms and conditions as stated. By affixing their signatures below, the parties agree that electronic approvals may serve as electronic signatures. In addition, the parties verify that they are authorized to bind this agreement between parties and that they accept the terms of this agreement.

1st Party:

Signature

Title

Printed name

Date

2nd Party:

Signature

Title

Printed name

Date

Other Party:

Signature

Title

Printed name

Date

Approved as to form and legality:

Attorney

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Modification History

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MOD # 1

5/5/09

Previous amt: \$243,000
Increase amt: \$17,500
New Total Amt: \$260,500

This modification is made to add the American Recovery and Reinvestment Act (ARRA) funds to commodity line two which shall be a one time start up awards cost for recruiting, hiring and setting up of new positions in order to be ready for the model change in the program structure that will be effective on July 1, 2009. Adanta must hire and train an adequate number of appropriately qualified service coordination personnel. These "start up" funds provided by the American Recovery and Reinvestment Act (ARRA) may be used for nonrecurring expenses associated with infrastructure development and program improvement. ARRA funds shall be used to facilitate the hiring of qualified service coordination staff (e.g. advertising, recruitment), assure 'just in time' training for new personnel, purchase materials necessary for employment (e.g. computers, desks, chairs) and, if necessary, support pre-July 1 salary for new positions (post-July 1 salary is accounted for in the FY2010 budget). ARRA funds may not be used for construction or for the purchase of equipment costing \$5000 or more.

Incorporated the above language in Section 2.00 (11) Scope of work, added Section 5 - Standard Terms and Conditions for contracts and grants using ARRA Funds and add the additional funds in the Cost/Budget Section.

This contract is also being modified to incorporate language changes to the memorandum of agreement boilerplate due to the Cabinet reorganization.

Page 1 (Header of the University Contract) Change from:

Cabinet for Health and Family Services
Office of Contract Oversight
Department for Public Health
Felicia Biggerstaff, CPPB, Contract Specialist
Division of Contract Development Services
275 East Main Street, 4 E-E
Frankfort, KY 40621
Telephone: 502 / 564-6746

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Fax: 502 / 564-2467

E-mail: Felicia Biggerstaff@ky.gov

To:

Cabinet for Health and Family Services

Department for Public Health

Felicia Biggerstaff, CPPB, Contract Specialist

275 East Main Street, HS1WC

Frankfort, KY 40621

Telephone: 502 / 564-6663

Fax: 502 / 564-0919

E-mail: Felicia Biggerstaff@ky.gov

Section 1.01 Issuing Office and Section 1.02 Communications/ The contact information has been updated to the Department for Public Health.

Section 3.00 Beginning of Work:

The following sentence has been added: "The Contract is not effective and binding until approved by the Office of Policy and Budget and the Secretary of the Finance and Administration Cabinet.

Section 3.03 Changes and Modifications to the Contract

All references to the "Division of Contract Development Services" have been changed to the Department for Public Health

Section 3.07 Notices

Contract Specialist Information changed as follows:

From: Felicia Biggerstaff, CPPB

Office of Contract Oversight

Cabinet for Health and Family Services

275 East Main Street, 4E-E

Frankfort, Kentucky 40621-0001

Facsimile number: 502- 564-2647

To: *Felicia Biggerstaff, CPPB*

Department for Public Health

Cabinet for Health and Family Services

275 East Main Street, HS1WC

Frankfort, Kentucky 40621-0001

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Facsimile number: 502-564-0919

Section 3.08 Payment

Change: "Invoices for payment shall be submitted to the Office of Contract Oversight or Cabinet Agency Contact Person or his/her representative."

To: "Invoices for payment shall be submitted to the Department Contact Person or Department Contract Specialist or his/her representative."

Section 4.03 Extension Periods and Amendments to Contract

Add "the Office of Policy and Budget and" to the first sentence after "are subject to the approval of "and prior to "the Secretary of the Finance and Administration Cabinet." Replace references to the "Office of Contract Oversight", 275 East Main 4E-E, Frankfort, KY 40621 to Department for Public Health, 275 East Main Street HS1WC, Frankfort, KY 40621

Section 4.05 Assignment

Replace "Office of Contract Oversight" with "Office of Policy and Budget and the Division of Accounting Services"

For the following Sections: 4.24 Responsibility for Subcontractor Contract Requirements, 4.35 Requirement of Inventory, 4.36 Maintenance of Insurance, 4.38 Scientific Misconduct, 4.48 Legal Proceedings

Replace all references to the "Office of Contract Oversight, Division of Contract Development Services, 275 East Main Street, 4E-E, Frankfort, KY 40621 with Department for Public Health, 275 East Main Street HS1WC, Frankfort, KY 40621

Cabinet for Health and Family Services

Department for Public Health

**Felicia Biggerstaff, CPPB, Contract Specialist
275 East Main Street, HS1WC
Frankfort, KY 40621
Telephone: 502 / 564-6663
Fax: 502 / 564-0919**

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E-mail: Felicia Biggerstaff@ky.gov

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Section 1—Administrative Overview

1.00—Purpose and Background

Adanta will develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families. Point of Entry, Child Find, Public Awareness, and Service Coordination.

The First Steps Program is Kentucky's Early Intervention Systems that serves children from birth to age 3 who have a developmental delay or a specific medical condition that is known to cause a developmental delay such as speech impairment, inability to sit up independently, inability to feed oneself or meet milestones that typically developing children would reach. The First Steps Program enrolls over 11,000 children per year, and utilizes over 2,000 providers statewide. The children receive early intervention services mandated by the Federal Part C Program and the providers ensure delivery of these services. This federal program requires the maintenance of statistical data for the services provided, which is directly related to the billing of services. Kentucky has provided early intervention services for approximately 17 years.

1.01—Issuing Office

The Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Public Health, is issuing this Contract on behalf of the Division of Maternal and Child Health. The Department for Public Health is the only office authorized to change, modify, amend, alter, or clarify the specifications, terms and conditions of this Contract.




1.02—Communications

The Contract Specialist named below is the point of contact for communications concerning contract issues.

Felicia Biggerstaff, CPPB
502 / 564-6663 ext.3905
Fax – 502 / 564-0919
E-mail: Felicia.biggerstaff@ky.gov

1.03—Terminology

For the purpose of this Contract, the following terms may be used interchangeably;

-  Proposer, Offeror, Contractor, Provider, Second Party, or Vendor
-  Contract Specialist, Buyer, Purchaser, or Contract Officer
-  Proposal, or Offer

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- ✂ Commonwealth of Kentucky, Commonwealth, State of Kentucky, or State
- ✂ Fiscal Year will be defined as the Commonwealth fiscal year: July 1 through June 30
- ✂ Biennium will be defined as the Commonwealth biennium: July 1 of each even numbered year through June 30 of the next even numbered year.

1.04—Definitions

1. "Assessment" means activities completed to develop a service plan for an eligible child and his or her family;
2. "Assistive technology device" means any item, piece of equipment, or product system that is needed to increase, maintain, or improve the functional capabilities of a child with a disability and which is necessary to implement the individualized family service plan;
3. "Central office" means administrative staff located in Frankfort who provide oversight and guidance for the various aspects of the First Steps program;
4. "Child find" means as defined in KRS 200.654(3);
5. "CSPD" means the Comprehensive System for Personnel Development;
6. "Council" means the Kentucky Early Intervention System Interagency Coordinating Council;
7. "Developmental quotient" or "DQ" means a specific designation described in and determined using the examiners manual of a norm referenced test. It is not an extrapolated score based on a screening test;
8. "Direct supervision" means the continuous, on-site observation and guidance as activities are implemented with children and families;
9. "Disciplines" means those professionals recognized by First Steps to practice in early intervention services;
10. "District Early Intervention Committee" or "DEIC" means as defined in KRS 200.654(6);
11. "District technical assistance team" means a professional and a parent of a child with a disability combined staffing unit for the purpose of providing technical assistance, training, and support to families and providers in the local community;
12. "Early intervention services" means as defined in KRS 200.654(7);
13. "Early intervention team" means two (2) or more disciplines providing services to a child and family which employ any one (1) of the team models that include a multidisciplinary team;

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14. "Evaluation" means the use of standardized norm-referenced procedures to determine eligibility for First Steps services;

15. "Family centered" means the recognition that the family is the constant in a child's life and that services and personnel must support, respect, encourage, and enhance the strength and competence of the family;

16. "Family directed" means the recognition that a family has choices and that services are provided in accordance with the family's priorities, concerns, and values;

17. "FERPA" means Family Educational Rights and Privacy Act and protects the rights and privacy of student education records;

18. "First Steps" means Kentucky's early intervention system as defined in KRS 200.654;

19. "HIPAA" means the Health Insurance Portability and Accountability Act and refers to the security and privacy of all documents, records, and conversations related to an individuals health care;

20. "Infants and toddlers with disabilities" and "eligible children" mean children from birth to thirty-six months of age in need of early intervention services;

21. "Initial service coordinator" means the person who acts as the initial liaison for the family and introduces them to early intervention services;

22. "Interdisciplinary team" means professionals working together cooperatively in both planning and delivering services to the eligible child. Emphasis is upon teamwork and interaction among team members who help and rely upon each other to provide well coordinated services, although each discipline ultimately delivers the services in its own domain;

23. "Image consistency kit" means the guidelines developed by the Interagency Coordinating Council Public Awareness committee for the purpose of ensuring that any use of the First Steps logo and other public awareness materials shall be consistent and in conformity with exact specifications set forth by the committee;

24. "Indirect supervision" means the regular, periodic, on-site observation and guidance as activities are implemented with children and families;

25. "Individualized family services plan" or "IFSP" means as defined in KRS 200.654(9);

26. "Individuals with Disabilities Education Act (IDEA)" is the federal act establishing the regulations and requirements for state Early Intervention Services;

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27. "Kentucky High Risk Hearing Registry" means as defined in KRS 213.046;
28. "Medicaid" means the federally and state funded program which pays for and coordinates medical services for lower income families;
29. "Mentorship" means a limited period of one (1) year of indirect supervision;
30. "Multidisciplinary team" means as defined in KRS 200.654(11);
31. "Natural environments" means settings, such as the home and the community, in which the child's age peers who have no disability normally participate;
32. "Office of Special Education Programs (OSEP)" means the federal program providing oversight and guidance of state Early Intervention Services and who administers the Individuals with Disabilities Education Act.
33. "Period of eligibility" means the time from referral to First Steps to termination of services due to: (a) Failure to meet initial program eligibility requirements; (b) Attainment of age three (3); (c) Documented refusal of service by parent or legal guardian inclusive of disappearance; (d) Change of residence out of state;
34. "Point of Entry/Local Lead Agency" or "POE/LLA" means as defined in KRS 200.654(12);
35. "Prematurity" shall mean a gestational age, at birth, of less than thirty-seven (37) weeks;
36. "Primary referral source" means those in the community who have the greatest opportunity, by virtue of their work, their relationship to children of this age, or their special knowledge, to refer a child to First Steps;
37. "Primary service coordinator" or "PSC" means the personal responsible for coordination of services after the POE/LLA initial service coordinator has completed his responsibilities for IFSP development;
38. "Provider action" means actions or decisions by the First Steps staff, and actions or decisions made by service providers relating to the identification, evaluation, placement of the child or the provisions of appropriate early intervention services;
39. "Qualified service provider" means as defined in KRS 200.654(13);
40. "Record review" means the process to review the record of any child that is in First Steps requesting services greater than the preauthorized amount, to determine eligibility, or to refer for Intensive Level Evaluation as described in 911 KAR 2:200;
41. "Technical assistance" means training, visits, telephone calls, e-mails, and mailings to the First Steps Point

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of Entry, primary service coordinators, local service providers, and families who have infants/toddlers with disabilities and delays;

42. "Teratogen" means an agent causing fetal malformations;

43. "Transdisciplinary team" means professionals from various disciplines working together cooperatively by educating one another in the skills and practices of their disciplines and a commitment to work together across traditional discipline boundaries being consistent with the training and expertise of the individual team members.

1.05—Organization

This contract is organized in the following manner:

Section 1—Administrative Overview / General information regarding the objectives of the Contract.

Section 2—Scope of Work / Description of tasks to be performed, contractor responsibilities, deliverables, performance criteria, technology standards, and system requirements.

Section 3—Terms and Conditions of the Contract / Terms and Conditions under which the Contractor shall perform this Contract.

Section 4—CHFS Standard Terms and Conditions of Memorandum of Agreements

Exhibits— Procurement Requirements

Exhibit A- Sworn Statement Regarding Violations of Kentucky Revised Statutes

Exhibit B- Campaign Finance Law Compliance

Forms—OPTIONAL—A Budget may be attached depending on the structure of the cost information.

Section 2—Scope of Work

2.00—Scope of Work - Services Required

Adanta (POE/LLA Office) will service as the regional intake and service coordination entity for First Steps (Part

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C Early Intervention) and related services in Lake Cumberland Area Development District..

Adanta shall provide the following Program Services:

POE/LLA offices will provide services as defined in the First Steps Policy and Procedure Manual at <http://chfs.ky.gov/dph/firststeps.htm>, as defined in 911 KAR 2:100 through 2:200, and as described below, and agree to act in accordance with all state and federal statutes and administrative rules applicable to the provision of Part C Early Intervention (First Steps) services. In its leadership role, the POE/LLA shall engage in the following activities to support and maintain effective Part C Early Intervention services, using forms and procedures as directed by DPH and as set forth in 911 KAR 2:100 through 2:200 and the Policy and Procedure Manual:

1. Hire, train, supervise and support a qualified First Steps POE/LLA program manager who will be employed by the POE/LLA and dedicated full time to the First Steps program. If the POE/LLA is shared by two contractors, the contractors may determine how the program manager will be employed (i.e. through one contractor or split between the 2 contractors). However, this employment structure must be disclosed to First Steps Central Office via the appropriate required fiscal/staff reporting forms. The POE/LLA program manager will be responsible for the following activities:
 - a. Administrative oversight of POE/LLA staff, services and other functions;
 - b. Participating in the hiring of all service coordination and POE/LLA clerical support staff;
 - c. Maintaining sufficient service coordination staff to assure appropriate caseloads
 - d. Training and supervision of all service coordination and clerical staff;
 - e. Monitoring and analysis of POE/LLA performance, including regular assessment of the accuracy of POE/LLA performance data;
 - f. Monitoring and analysis of service coordination documentation and data submission to ensure that documented fee-for-service activities are maximized;
 - g. Coordinating Child Find and Public Awareness activities as described in 911 KAR 2:110 and as otherwise indicated to address concerns regarding First Steps participation in the POE/LLA geographic area;
 - h. Identifying and working to address barriers to referral and/or enrollment of children who may be eligible for the First Steps program;
 - i. Developing and submitting all required Central Office reports, including the POE/LLA Monthly Report;
 - j. Representing the POE/LLA on the District Early Intervention Council (DEIC);
 - k. Establishing/maintaining relationships with First Steps service providers, DEIC member agencies, local health departments, local maternal and child health partners, infant and maternal mental health resources, local social service agencies, local and other referring pediatricians/pediatric subspecialists, local public and private education agencies, local child care providers, and other local First Steps stakeholders;
 - l. Tracking children whose services have been delayed due to provider shortages; report service delays (without identifying information) to the DEIC and Central Office and assist the DEIC in provider

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recruitment efforts to address the provider shortage; and assist the Technical Assistance Team (TAT) in provider recruitment efforts to address the provider shortage;

- m. Reporting all service delays to Central Office in a format defined by Central Office;
 - n. Participating in face-to-face meetings with one or more TAT members on no less than a quarterly basis to review program performance, discuss local program needs, address service delays, discuss provider shortages and obtain technical assistance as needed;
 - o. Participating in Quarterly POE/LLA Meetings with Central Office staff or other meetings at the request of Central Office staff;
 - p. Developing and maintaining a compendium of resources for families of children who do not meet First Steps eligibility criteria.
 - q. Assuring that a staff person is available at the POE/LLA Office during regular state working hours.
2. Hiring sufficient initial service coordination staff to support a recommended caseload of approximately 25 children. The POE/LLA may also hire qualified primary service coordination staff and bill via the First Steps web-based data system for PSC services on a fee-for-service basis.
 3. Hiring sufficient clerical support to be responsible for:
 - a. Completing data entry activities as assigned to ensure that First Steps information is entered into the centralized web-based data system in a timely manner.
 - b. Completing data entry activities as assigned in order to ensure that provider assessment protocols are entered into the First Steps web-based data system in a timely manner.
 - c. Providing clerical support to the First Steps POE/LLA manager and service coordination staff, including, but not limited to, answering phones, sending and receiving faxes, copying, mailing, filing and other POE/LLA duties as assigned.
 4. Ensuring that the POE/LLA office is open and accessible to parents and other First Steps stakeholders Monday through Friday for no less than an 8.0 hour period between the hours of 7:30 am and 6:00 pm with the exception of generally observed holidays and closures due to inclement weather or other unforeseen circumstances.
 5. Ensuring that there is a mechanism in place to receive and log referrals (i.e. phone, fax, e-mail, mail) 24 hours a day, seven days a week.
 6. Maintaining internet access and at least one secure e-mail account. Ensure that e-mail is checked every working day at multiple times during the day in order to ensure that Central Office, provider and other stakeholder communication is addressed in a timely manner. A "working day" is defined as Monday, Tuesday, Wednesday, Thursday or Friday during the 8.0 hour period between the hours of 7:30 am and 6:00 pm that the POE/LLA office is open and accessible to parents and other First Steps stakeholders, with the exception of generally observed holidays and closures due to inclement weather or other unforeseen circumstances. Individual POE/LLA staff may have individual e-mail boxes that are

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not regularly checked. However, at least one secure e-mail account must be checked regularly every working day.

7. Complying with the Family Education Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA) and all rules promulgated there under.
8. Providing adequate accessible space/facilities to store permanent child records, house staff and hold meetings.
9. Submitting all documentation required by the First Steps web-based data system and/or Central Office within established timeframes where applicable and in any case as timely as possible, including all required forms and reports.
10. Purchasing and maintaining equipment (i.e. copiers, phones, fax, computers) to adequately meet the needs of the POE/LLA office/staff.
11. Hire and train an adequate number of appropriately qualified service coordination personnel. These "start up" funds provided by the American Recovery and Reinvestment Act (ARRA) may be used for nonrecurring expenses associated with infrastructure development and program improvement. ARRA Funds shall be used to facilitate the hiring of qualified service coordination staff (e.g. advertising, recruitment), assure 'just in time' training for new personnel, purchase materials necessary for employment (e.g. computers, desks, chairs) and, if necessary, support pre-July 1 salary for new positions (post-July 1 salary is accounted for in the FY2010 budget). ARRA funds may not be used for construction or for the purchase of equipment costing \$5000 or more.

2.01—Reporting Requirements

1. Submitting a monthly report in a format defined by First Steps Central Office, no later than the 10th of the month following the reporting month (for example, the July 2008 report will be due August 10, 2008). The report format will be available on the First Steps website at <http://chfs.ky.gov/dph/firststeps.htm>.
2. Submitting a line item expense report in a format defined by First Steps Central Office, no later than the 10th day of the month following the end of the previous month. The expense report format will be available on the First Steps website at <http://chfs.ky.gov/dph/firststeps.htm>.

2.02—Payment and Invoicing Requirements

1. POE/LLA Payments

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The Department for Public Health will make payment to the POE/LLA according to their monthly invoice amount, provided such cumulative payments do not exceed the contract amount.

2. Penalty Adjustment

Penalty adjustments will be subtracted from the POE/LLA grant award for failure to meet basic performance levels in the areas set forth below. The Cabinet for Health and Family Services First Steps program reserves the right to assess monetary and procedural penalties for any unmet goals and targets. Delays due primarily to exceptional family circumstances will be excluded from penalties.

- a. A 2% reduction will be made to the POE/LLA grant award for each quarter in which the percent of cases in intake over 45 days exceeds 10%.
- b. A 4% reduction will be made to the POE/LLA grant award for each quarter in which the percent of cases in intake over 45 days exceeds 15%.

2.03-CHFS/Agency Responsibilities

The Cabinet for Health and Family Services (Cabinet) has determined that the function enumerated in this Agreement and all other governing documents incorporated herein by reference, are necessary for the lawful performance of its duties in accordance with the statutory and regulatory requirements of the Commonwealth of Kentucky (the Commonwealth), and as specifically set forth in those Federal laws and regulations governing State administration of programs and funding.

2.04– Monitoring Requirements – Federal and State

1. Participating in monitoring by the U.S. Department of Education Office of Special Education Programs, the Department for Public Health, the Technical Assistance Teams, the Department of Medicaid Services, or other potential auditors; data collection and reporting obligations; record or chart audits; complaint investigations; and consumer satisfaction surveys.

2. A mid year review will be completed in December 2008 on this contract.

2.05– Related Documents and Materials Incorporated by Reference

911 KAR 2:100 Definitions

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911 KAR 2:110 Kentucky Early Intervention Program point of entry
 911 KAR 2:120 Kentucky Early Intervention evaluation and eligibility
 911 KAR 2:130 Kentucky Early Intervention Program assessment and service planning
 911 KAR 2:140 Kentucky Early Intervention Program primary service coordination and assistive technology
 911 KAR 2:150 Kentucky Early Intervention Program personnel qualifications
 911 KAR 2:160 Kentucky Early Intervention Program covered services
 911 KAR 2:170 Notice of action and administrative appeal
 911 KAR 2:180 Kentucky Early Intervention Program mediation
 911 KAR 2:200 Coverage and payment for Kentucky Early Intervention Program services
 34 CFR 303
 KRS 200.666; KRS 200.670; 200.654; KRS 200.662
<http://www.lrc.state.ky.us>
<http://chfs.ky.gov/dph/firststeps.htm>

Section 3—Terms and Conditions of the Contract

3.00—Beginning of Work

The Contract is not effective and binding until approved by the Office of Policy and Budget and the Secretary of the Finance and Administration Cabinet. The Contractor shall not commence any billable work until a valid Contract has been fully executed. The Contract shall represent the entire agreement between the parties. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this Contract.

3.01—Contract Components and Order of Precedence

The Commonwealth's acceptance of the Contractor's offer indicated by the issuance of a Contract Award by the Department for Public Health shall create a valid Contract between the Parties consisting of the following:

1. Any written Agreement between the Parties;
2. The Finance and Administration Cabinet Manual of Policies and Procedures contained in 200 KAR 5:021 and the Office of Material and Procurement Services' **General Conditions And Instructions For Solicitations And Contracts** contained in FAP110-10-00.

In the event of any conflict between or among the provisions contained in the Contract, the order of precedence shall be as enumerated above.

3.02—Term of Contract and Renewal Options

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The initial Term of the Contract shall be for a period of __1__ years from the effective date of the Award of Contract.

The Terms and Conditions of this Contract may be extended or amended according to the provisions of KRS Chapter 45A. This Contract may **not** be renewed at the completion of the initial Contract period upon the mutual agreement of the Parties and approval of the Secretary of the Finance and Administration Cabinet and/or the Legislative Research Commission's Government Contract Review Committee. Such mutual agreement shall take the form of a modification to the Contract under **Section 3.03—Changes and Modifications to the Contract**.

The Commonwealth reserves the right not to exercise any or all renewal options if such an extension is determined by the Contract Specialist not to be in the best interest of the Commonwealth.

3.03—Changes and Modifications to the Contract

Pursuant to KRS 45A.210(1) and 200 KAR 5:311, no modification or change of any provision in the Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the Commonwealth, and incorporated as a written amendment to the Department for Public Health of the Cabinet for Health and Family Services prior to the effective date of such modification or change pursuant to KRS 45A.210(1) and 200 KAR 5:311. Memorandum of Understanding, written clarification, and/or correspondence shall not be construed as amendments to the Contract.

If the Contractor finds at any time that existing conditions made modification of the Contract necessary, it shall promptly report such matters to the Contract Specialist for consideration, and Cabinet management approval.

3.04—Changes in Scope

The Commonwealth may, at any time by written order, make changes within the general scope of the Contract. No changes in scope are to be conducted except at the approval of the Commonwealth through the process described in **Section 3.03—Changes and Modifications to the Contract**.

3.05—Cancellation

The Cabinet shall have the right to terminate and cancel this agreement at any time upon thirty (30) days written notice served on the contractor by registered or certified mail outlining the reasons for the cancellation. The Second Party has the same such right to terminate said agreement, upon thirty (30) days written notice served on the Cabinet by registered mail or certified mail outlining the reasons for the cancellation.

3.06—Contract Conformance

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If the Contract Specialist determines that deliverables due under the Contract are not in conformance with the terms and conditions of the Contract and the mutually agreed-upon project plan, the Contract Specialist may request the Contractor to deliver assurances in the form of additional Contractor resources and to demonstrate that other major schedules will not be affected. The Commonwealth shall determine the quantity and quality of such additional resources and failure to comply may constitute default by the Contractor.

3.07—Notices

Unless otherwise instructed, all notices, consents, and other communications required and/or permitted by the Contract shall be in writing.

After the Award of Contract, all Programmatic communications are to be made to the Cabinet Agency Contact Person listed below with a copy to the Contract Specialist, as identified in Section 1.02.

The Cabinet for Health and Family Services

Commissioner William D. Hacker, MD
Department for Public Health
275 East Main Street,
Frankfort, Kentucky 40621-0001
Facsimile number:

With copy to:

Contract Specialist

Felicia Biggerstaff, CPPB
Department for Public Health
Cabinet for Health and Family Services
275 East Main Street, HS1WC
Frankfort, Kentucky 40621-0001
Facsimile number: 502-564-0919

After the Award of Contract, all communications of a contractual or legal nature are to be made to the Contract Specialist.

3.08—Payment

The fees and expenses relative to the performance of the services outlined in the Contract shall not exceed the amount as approved in the Contract. The services are to be performed during the term of the Contract as specified in Section 3.02. The Contract is not effective and binding until approved by the Secretary of the Finance and Administration Cabinet and the Legislative Research Commission's Government Contract Review

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Committee.

The Commonwealth will make payment within thirty (30) working days of receipt of the Contractor's invoice or of acceptance of goods and/or services in accordance with KRS 45.453 and KRS 45.454. Invoices for payment shall be submitted to the Department Contact Person or Department Contract Specialist or his/her representative.

Payments are predicated upon successful completion and acceptance of the described work, services, supplies, or commodities, and delivery of the required documentation. Payments on Memorandum of Agreements shall not be authorized for services rendered if the Legislative Research Commission's Government Contract Review Committee has disapproved the contract, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet.

3.09—Expenses

The contractor shall only be reimbursed for those expenses that are expressly detailed in the Contract.

- a) Invoicing for fee: The contractor's fee shall be documented on an original invoice(s) detailing the work performed and the time frame in which it was performed.
- b) Invoicing for travel expenses: If travel expenses are allowed under the contract; they will be submitted pursuant to Section 4.22 Travel and Hourly Rate.
- c) Invoicing for miscellaneous expenses: Allowable expenses shall be documented on an original invoice or certified copy.

3.10—Social Security

The Second Party and all other parties so contracted for services under the scope of service of this Contract agree that they are cognizant that CHFS is not liable for Social Security contributions pursuant to 42 U.S Code, Section 418, relative to the compensation of the Second Party during the effective dates of this Contract.

3.11—Advertising Award

The Contractor shall not refer to the Award of Contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky.

Section 4—CHFS Standard Terms and Conditions for Memorandum of Agreements

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4.00—The Contract

CHFS and the Second Party agree to the terms and conditions as set forth in this Contract and as set forth in all Attachments incorporated herein by reference. This Contract and the Attachments incorporated herein by reference comprise a full and complete expression of the rights and obligations of the Parties as to the subject matter hereof and they shall supersede any and all other agreements, written or oral, heretofore made by the Parties.

4.01—Attachment(s)

The Attachment(s) as referenced in this Contract is/are incorporated into this Contract and is/are binding on all Parties. If an Attachment(s) is/are in conflict with this Contract and its contract clause(s), this Contract and its contract clauses shall prevail.

4.02—Effective Date of Contract and Earliest Date of Payment

The Second Party agrees to perform the services and functions specified during the term of this Contract. It is understood that this Contract is not effective and binding until approved by the Secretary of the Finance and Administration Cabinet and the Government Contract Review Committee in accordance with KRS Chapter 45A.690-725. CHFS shall provide timely notice to the Second Party of disapproval of this Contract or any amendment thereto under KRS Chapter 45A.690-725.

4.03—Extension Periods and Amendments to Contract

The terms and conditions of this Contract may be extended or amended according to the provisions of KRS Chapter 45A.690-725, and are subject to the approval of the Office of Policy and Budget and the Secretary of the Finance and Administration Cabinet and the Government Contract Review Committee. The Second Party may request an amendment by submitting a written request to the Cabinet for Health and Family Services, Department for Public Health, 275 East Main Street HS1WC, Frankfort, KY 40621. Amendments are not in effect until written approval is received from CHFS. The Second Party shall not request an amendment within the first ninety (90) days or within the last sixty (60) days of the Contract period.

4.04—Funding

This Contract is expressly conditioned on the availability of state and federal appropriated funds. CHFS shall fund the delivery of services and supports, and activities under the terms and conditions of this Contract to the extent that the funding allocations specified are made available to CHFS. The Second Party shall have no right of action against CHFS in the event that CHFS is unable to perform its obligations under this Contract as a result of the suspension, termination, withdrawal, or failure of funding to CHFS or lack of sufficient funding to CHFS for any activities or functions contained within the scope of this Contract.

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Other provisions of this Contract notwithstanding, the Second Party agrees that if funds are not appropriated or are not otherwise made available to CHFS for the purpose of making payments hereunder, then CHFS shall be authorized to make payment to the extent possible and/or terminate this Contract in accordance with Section 4.40 Provisions for Termination without obligation for the payment of any cancellation or termination charges and without any other obligation or liability hereunder.

4.05—Assignment

This Contract shall be binding upon and inure to the benefit of the respective legal successors of the Parties. Neither this Contract nor any rights or obligations hereunder may be assigned, in whole or in part, without the prior written consent of CHFS, Office of Policy and Budget and the Division of Accounting Services.

4.06—Bankruptcy

In the event the Contractor becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the Commonwealth's right to terminate this Contract may be subject to the rights of a trustee in bankruptcy to assume or assign this Contract. The trustee shall not have the right to assume or assign this Contract unless the trustee:

- (a) promptly cures all defaults under this Contract;
- (b) promptly compensates the Commonwealth for the monetary damages incurred as a result of such default, and
- (c) provides adequate assurance of future performance, as determined by the Commonwealth.

4.07—Contractor Cooperation in Related Efforts

The Commonwealth of Kentucky may undertake or award other contracts for additional or related work, services, supplies, or commodities, and the Contractor shall fully cooperate with such other contractors and Commonwealth employees. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Commonwealth employees.

4.08—Notice

Unless otherwise provided, all notices, consents, and other communications required and/or permitted by this Contract shall be in writing as specified in **Section 3.07** and shall be deemed given to a Party when:

- a) Delivered to the appropriate address by hand, United States Postal Service, or by a nationally recognized overnight courier service (costs prepaid);
- b) Sent by facsimile with confirmation of transmission by the transmitting equipment; or

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- c) Received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses and facsimile numbers and marked to the attention of the person by title designated below (or to such other address, facsimile number, or person) as a Party may designate by notice to the other Party:

If personally delivered, such notice shall be effective upon delivery and if mailed as provided for above, such notice shall be deemed effective three (3) calendar days after it is placed in the mail.

4.09—Headings

The section headings in this Contract are for reference and convenience only and shall not have any effect on the construction or legal effect of this Contract.

4.10—Severability

It is understood and agreed by the Parties that if any part, term, or provision of this Contract is held by the courts to be illegal or in conflict with any law of the Commonwealth of Kentucky or of the United States of America, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular part, term, or provision held to be invalid, if the remainder of the Contract is capable of performance.

4.11—Indemnification

The Second Party shall indemnify and hold harmless CHFS and its agents, representatives, officers, directors, employees, insurers, successors, and assigns from and against any and all expenses, costs (including attorneys' fees), causes of action, liability, loss and/or damages suffered or incurred by it or any of them, that results from or arises of (a) this Contract; (b) any and all acts of the Second Party and or its Subcontractor(s); (c) the policies and procedures of the Second Party, specifically including all Second Party employment practices employed by Second Party during the term of this or any prior Agreement with CHFS; (d) any dishonest, fraudulent, criminal, or negligent or unauthorized acts or errors or omissions which are committed by Second Party or any of Second Party's employees or agents or Subcontractors; (e) the publication translation, reproduction, delivery, performance, use or disposition of any data produced by CHFS in an unauthorized manner, provided that such action was not taken by Second Party or as a result of the express written request of CHFS; or (f) Second Party's failure to comply with any applicable state or federal laws or regulations.

Provided, however, in the event the Second Party is a state agency or subcontracts for services with a state agency subject to the jurisdiction of the Board of Claims pursuant to KRS 44.070 through KRS 44.160, the state agency's tort liability shall be limited to an award from the Board of Claims up to the jurisdictional amount.

4.12—Sovereign Immunity

The Parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver by

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CHFS or the Commonwealth of Kentucky of any immunities from suit or from liability that CHFS or the Commonwealth of Kentucky may have by operation of law.

4.13—Force Majeure

Neither Party shall be liable for public utility performance (e.g., Postal service, telephone or water company) or for the consequence of public utility non-performance. Events or conditions beyond the reasonable control of the Parties, such as natural disasters, fires, floods, elements, transportation crashes, or utility failures shall not be construed as non-performance, nor shall reductions be applied as a result of such events, provided that CHFS shall have the right to obtain the necessary services elsewhere in the event of such non-performance by the Second Party and the Parties shall negotiate in good faith any appropriate offset to the compensation payable under this Contract. The Second Party shall cooperate and shall require that any Subcontractor cooperate with CHFS in such event. The existence of such causes of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Each Party must inform the other in writing with proof of receipt within five (5) business days of the existence of a Force Majeure event or otherwise waive this right as a defense.

4.14—Obligation of Good Faith

Each party shall be obligated to act in good faith in the performance and enforcement of its obligations herein, and shall deal fairly, honestly and reasonably with the other party, having due regard for all relevant facts and circumstances.

4.15—Code of Ethics

The Second Party and all professional personnel who may provide services under this contract or any subcontract with the Second Party shall be familiar with and abide by any and all code of ethics or conduct that has been established by a national or regional association and is generally recognized as being applicable. Failure of the Second Party to abide by the applicable code of ethics shall result in the immediate termination of the contract.

4.16—Influence on Purchasing and Other Business Transactions

The Second Party shall not attempt, in any manner, to influence any business transactions to be unlawful in any way or respect, nor attempt in any way to influence specifications for or purchasing of services, commodities, or equipment by the Commonwealth of Kentucky.

4.17—Notices and Pamphlets

All notices, employment, advertisements, information pamphlets, research reports, and similar public notices prepared and released by the Second Party, pursuant to this Contract, shall include a statement identifying the appropriate source of funds, for the project or service, including but not limited to, identifying whether the

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funding is in whole or in part from federal, CHFS, or other state funds.

4.18—Service Delivery Requirements

All services provided by the Second Party under the terms and conditions of this Contract shall be delivered in accordance with:

- a) All applicable federal and state statutes and regulations as they are currently in effect;
- b) All commitments and assurances as set forth in all CHFS grant awards with respect to goals, strategies, funding, and outcomes made by the Commonwealth as required by and contained in grant applications to federal agencies, foundations, and other agencies providing grant funding and in the resulting award notices from those agencies; and
- c) All final federally-funded grant award terms and conditions, including federal reporting and expenditure requirements, for any federally-funded proposed project developed jointly by the Second Party and CHFS and submitted to a federal agency.

4.19—Roles and Responsibilities for Proposed and Existing Staff

The roles and responsibilities and the written qualifying criteria for all personnel to be employed under the scope of work for all projects funded under this Contract, including any proposed employees under subcontract to the Second Party, shall be in compliance with state and federal laws governing the distribution of funds and the performance of activities as set forth in the project(s) in this Contract. The Second Party shall maintain and make available, upon written request, documentation of all personnel policies and procedures that govern the recruitment, hiring and performance evaluation for all personnel funded under this Contract. All employees hired by the Second Party or its subcontractors and funded under the terms and conditions of this Contract, shall have position descriptions which set out the required qualifications, skills and knowledge required to complete the scope of work as set out under this Contract.

4.20—Terms and Conditions of Contract Payments

The Second Party shall not begin work on this contract until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been filed with the Government Contract Review Committee, except as otherwise exempt. [KRS 45A.695 (1)]

CHFS shall make payment to the Second Party only after the Secretary of the Finance and Administration Cabinet or his designee and the Government Contract Review Committee approve the contract except as otherwise exempt. Once approved, CHFS shall make payment to the Second Party within thirty (30) business days of receipt of accurate, acceptable and timely invoices, as specified in the Contract, submitted by the

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Second Party under the terms and conditions of the Contract. Payment is contingent upon Second Party's continued satisfactory performance throughout the duration of contract, as determined by CHFS. The invoice shall contain at a minimum the following information:

- a) Description of the service performed;
- b) Itemized statement of costs for a cost reimbursement contract;
- c) Dates and hours, if applicable, of the services provided; and
- d) Other information as required in this Contract.

Payment on Memorandum of Agreements shall not be authorized for services rendered after the Government Contract Review Committee's disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary of the Finance and Administration Cabinet. [Statement required by KRS 45A.695(7)]

CHFS shall reimburse the Second Party for services rendered only. If, for any reason, the Second Party is unable to render services, CHFS shall not be liable for payment to the Second Party for the time period in which the Second Party does not provide the services for which CHFS contracted.

CHFS shall reimburse the Second Party for benefits accrued during the contract period only in accordance with the approved budget and shall not be liable for benefits accrued prior to the beginning of or after the end of the contract period. All invoices for benefits, including sick, compensation, and annual leave time must be submitted prior to the contract expiration date to be considered appropriate, acceptable, and timely.

Payment is subject to the availability and allocation of local agency or governmental funds, or state or federal funds necessary to finance the performance of the services described in this Contract. CHFS retains the right to withhold payment if the Second Party does not comply with CHFS programmatic and fiscal reporting and monitoring requirements.

4.21—Total Amount of Funds and Budget Revisions

The Second Party shall not be reimbursed for any expenses other than those expressly prescribed in this Contract and other Attachments incorporated herein by reference. CHFS shall have the right to recoup the amount of any overpayment, regardless of the reason for the overpayment. Any reconciliation or settlement of fund balances contained in the Summary Line Item Section of this Contract shall be negotiated between CHFS and the Second Party and determined as soon as feasible before the end of the scope of work as set forth under the Contract.

The Second Party shall not request a budget revision within the first ninety (90) days or within the last sixty (60) days of the contract period.

4.22—Travel and Travel Hourly Rate

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The Second Party shall not be paid for travel expense unless and except as specifically authorized under the specifications of this Contract. Unless otherwise indicated, travel reimbursement for activities under the terms and conditions of this Contract shall be in accordance with 200 KAR 2:006. No travel time or travel expenses shall be included in the hourly rates of the Second Party's employees, or any subcontractor's employees to the Second Party, under this Contract.

4.23—Subcontractors

Unless provided for in the specifications, the Contractor shall make no subcontract with any other party for furnishing any of the work or services herein contracted without written consent of the Contract Specialist. This provision shall not require the approval of contracts of employment between the Contractor and personnel assigned for services thereunder. The Contractor shall be solely responsible for performance of the entire Contract whether or not subcontractors are used.

All references to the Contractor shall be construed to encompass both the Contractor and any subcontractors of the Contractor.

4.24—Responsibility for Subcontractor Contract Requirements

The Second Party shall have a Contract with any subcontractor that the Second Party contracts with to meet the statement of work, method of payment, and deliverables of this Contract that specifies the responsibilities of the parties and the cost. In addition, the Second Party's Contract with the subcontractor shall specify that all requirements of this Contract are applicable and binding on the subcontractor. Any plan to subcontract any of the provisions of this Contract must be set forth in the Second Party's proposal for the delivery of products or services and included in the body of the contract in the subcontractor's section. The subcontractor must make available to the Second Party and to CHFS, if requested, copies of personnel records and documentation of employees' compliance with the terms and conditions of this Contract.

No obligation or right of Second Party under this Contract shall be subcontracted to another, without prior written approval, of CHFS after CHFS has had the opportunity to review all contract documents setting forth the terms and conditions for the subcontract. Second Party, upon the cabinet's request, shall submit the subcontract for approval to: Cabinet for Health and Family Services, Department for Public Health, 275 East Main Street HS1WC, Frankfort, KY 40621.

4.25—Subcontractor Monitoring Requirements

The Second Party shall monitor subcontractors for programmatic and fiscal compliance with the terms and conditions of this Contract and those specific provisions set out under the Second Party's contract with the

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subcontractor. The Second Party agrees to utilize restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws regulations, and terms and conditions of the federal grant award in contracting with subcontractors.

Second Party further understands and agrees, and shall ensure that any Subcontractor understands and agrees, that CHFS and any of its duly authorized agents or representatives shall have access to any books, documents, papers, records, or any other materials which are pertinent to this contract or Subcontract, for the purposes of making monitoring, auditing, examination, excerpts, and transcriptions.

4.26—Cost Principles, Requirements and Limitations

The Second Party shall conform to the cost principles as set forth in 200 KAR 5:317; 45 C.F.R Parts 74, 92, 96; 48 C.F.R.31 and Contract Cost Principles and Procedures, Office of Management and Budget Circular A-122, *Cost Principles for Non-Profit Organizations* (as revised) and OMB Circular A-110, *Uniform Administrative Requirements for Grants and Contracts with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations* unless excluded by Federal laws or regulations, as applicable.

4.27—Requirements and Limitations on Indirect or Administrative Cost Requirements

Pursuant to OMB A-122, the Second Party shall maintain a written indirect cost allocation plan of direct and/or indirect costs if, in instances where the Second Party operates more than one (1) project, service, program, or activity. This provision is applicable to contracts that are of a cost reimbursement type.

The cost allocation plan shall be consistently and uniformly applied except where it is determined in writing by the CHFS Secretary or his or her designee to be in the best interest of CHFS to do otherwise.

In the event the Second Party has an indirect cost allocation rate and/or plan in operation that has been accepted and approved by the Second Party's cognizant federal agency, CHFS shall recognize the cost allocation plan for purposes of recording and reporting reimbursable costs to the extent that such costs are allowable and within the administrative and/or indirect cost limitation as set forth in the approved budget for each funding source of this Contract. Two (2) copies of the approved indirect cost allocation rate and/or plan shall be furnished to the agency contact identified in **Section 3.07**.

4.28—Financial Record Retention

The Second Party agrees to maintain all records pertaining to this contract for a period of not less than three (3) years after all matters pertaining to this contract (e.g., audit, settlement of audit exceptions, disputes) are resolved in accordance with applicable federal and/or state laws, regulations, and policies (except as may otherwise be specified in this contract).

4.29—Access to Records, Books, and Documents

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The Second Party agrees that CHFS and/or the federal grantor agency, the Comptroller General of the United States and/or the Kentucky Auditor of Public Accounts, and/or any of their duly authorized representatives or agents including independent auditors, shall have access to any books, documents, papers, and records of the Second Party which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

The Second Party agrees to permit staff of CHFS, persons acting for CHFS, and/or staff designated by appropriate federal agencies, to monitor and evaluate services, supports or activities being performed under the provisions of this Contract. The Second Party also agrees to submit all records and documentation of such in a format prescribed by CHFS in regard to contracted and subcontracted services when requested for monitoring purposes. The Second Party shall receive no additional remuneration for participation in the monitoring process. The Second Party agrees that CHFS, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, that are directly pertinent to this contract for the purpose of financial audit, contract monitoring or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission that are directly pertinent to the contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the contract. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information that would otherwise be subject to public release if a state government agency was providing this service.

4.30—Audit Requirements

If the Second Party is a non-federal entity, the Second Party shall have a single audit conducted in accordance with Government Auditing Standards (GAS), Generally Accepted Auditing Standards (GAAS), and OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations* issued by the Comptroller General of the United States and the Office of Management and Budget as amended. See current requirements at <http://www.whitehouse.gov/omb/circulars/index.html>.

The audit report's accompanying financial statements shall be issued in accordance with Generally Accepted Accounting Principles (GAAP) and reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited.

The audit shall cover each fiscal year period, and a copy of the Second Party's audit report(s), federal schedule of expenditures, supplemental information by cost center and/or program and audit findings with corrective action plan shall be submitted to the agency contact identified in **Section 3.07**, no later than six (6) months after the fiscal year end.

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Should the audit report refer to a separate management letter of findings, the Second Party shall include a copy of the management letter with the audit report and comments and/or a corrective action plan. All material findings shall be reported in the audit section of audit findings and shall include the management's response and/or corrective action as required by OMB Circular A-133.

The audit report shall include a schedule of expenditures of federal awards as stipulated by OMB Circular A-133 requirements and contain the following:

- a) The Catalog of Federal Domestic Assistance (CFDA) number;
- b) CFDA title/description; and
- c) Pass-through entity's name and contract number.

The audit report shall include supplemental information of all federal grant and/or award expenditures by cost centers and/or programs identifying all administrative and indirect cost for each state fiscal year. The Second Party shall include in the supplemental information a list of their subrecipients of federal monies received through this Contract and provide the following:

- a) Subrecipients name;
- b) CFDA number, title/description;
- c) Subrecipient's contract number; and
- d) Subrecipient's expenditures.

A copy of the engagement letter shall be submitted to the Cabinet for Health and Family Services, Office of Contract Oversight, 275 E. Main Street, 4E-E, Frankfort, Kentucky 40621 three (3) months prior to the Second Party's fiscal year end. If the Auditor of Public Accounts (APA) is to perform the audit, the name of the APA auditor and the anticipated start date shall be submitted to the Office of Contract Oversight, no later than three (3) months prior to fiscal year end unless that office or its designee grants an extension in writing.

4.31—Response/Compliance with Audit Findings

The Second Party shall take action to ensure its or a subcontractor's compliance with or correction of any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle relating to the services and deliverables or any other deficiency contained in any audit, review, or inspection conducted under this section. This action will include Second Party's delivery to CHFS, for CHFS approval, a Corrective Action Plan that addresses deficiencies identified in any audit(s), review(s), or inspection(s) within thirty (30) calendar days of the close of the audit(s), review(s), or inspection(s).

The Second Party shall bear the expense of compliance with any finding of noncompliance under this Section that is:

- a) Required by a Kentucky or Federal law, regulation, rule or other audit requirement relating to Second Party's business;
- b) Performed by Second Party as part of this Contract; or

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- c) Necessary due to Second Party's noncompliance with any law, regulation, rule, or audit requirement imposed on Second Party.

4.32—Equipment and Furniture

The Second Party shall not purchase equipment or furniture with contract funds unless and except as specifically authorized under the scope of work and specifications of this Contract.

4.33—Property of CHFS

Property purchased by CHFS for the purposes of fulfilling the requirements of this Contract, and which may include, but not be limited to, furniture, computer software, computer hardware, office equipment, and supplies are considered the property of CHFS with any single item purchase of \$500.00 or more, as well as single item purchases of \$5000.00 or more (capital expenditures), requiring prior approval by the Cabinet. Any Capital Expenditures of \$5,000 or more with Federal Dollars must also have the Federal Agency Prior Approval before the Federal government will allow the costs in accordance with 2 CFR Part 225 Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87). All computer and information technology equipment purchases, regardless of cost, require prior approval from the Office of Technology Services and must comply with state technology standards. All required prior approvals shall be obtained by e-mailing the Contract Specialist referenced in Section 3.07 of this contract. This property will remain as such, unless otherwise set forth in this Contract or other controlling documents incorporated herein by reference.

4.34—Property Control Ledger/Logs

The Second Party shall maintain a property control ledger/log that lists all property and/or furniture provided (whether leased or purchased) by CHFS with funds from this contract. As items are procured, a copy of the information that follows must be provided immediately to the CHFS Department Property Officer such that a property tag can be assigned for all items with a cost of \$500 or more. The second party shall immediately affix the tag provided to the corresponding property.

- a) CHFS Property Tag Number;
- b) Equipment serial number;
- c) Full Description of the item including make, model, color, etc.;
- d) Unit invoice to include all cost (i.e upgrades to the item such as additional computer memory purchased);
- e) Date of purchase and/or lease;
- f) Location where the equipment and furniture are located, include full address and state building

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- number when applicable; and
- g) Name of individual responsible for the equipment.

Once tagged and upon receipt of the following information for all items purchased, the Cabinet's first party will secure insurance coverage for the item. If the second party fails to report the required information, loss of the item will be at their expense.

If there is a change to the information above during the course of this contract, a CHFS 117 is required to be submitted to the CHFS Department Property Officer.

4.35—Requirement of Inventory

1. Inventory Tracking

The Second Party shall conduct a complete, physical inventory of all equipment and/or furniture provided by CHFS and provide such to the CHFS Department Property Officer by April 30th of each year. Said findings shall include the information in section 4.34 as well as acknowledgement that the item was located or missing, and where applicable the steps taken to locate the item and/or report such to the police. If an item is/has been transferred to another location or there is a custodian change, a CHFS-117 form is to be immediately completed and routed to the Cabinet's Department Property Officer, but no later than April 30th with the corresponding inventory.

2. Loss/Destruction

The Second Party shall immediately notify the CHFS, Department for Public Health, 275 East Main Street HS1WC, Frankfort, KY 40621 immediately if an item purchased by CHFS is damaged, missing, or stolen. In compliance with KRS 45.313, the Second Party shall forward in writing to CHFS the item description and corresponding property tag number with a written explanation of how the item was damaged, missing, and a police report if the item was stolen. The OCO will immediately notify the Agency Property Officer and the DFM, such that the proper steps can be taken to document/claim this loss to support replacement of the item if possible.

3. Surplus

All state owned property and supplies no longer needed, may be declared surplus and disposed of upon prior approval from the Cabinet. The CHFS, Office of Information Technology staff are responsible for sanitizing all computer equipment prior to disposal. Upon identification of items to be surplus or returned, the Second Party shall complete a B-217 and mail it to the CHFS Department Property Officer with a copy to the Department for Public Health, 275 East Main Street HS1WC, Frankfort, KY 40621 within thirty (30) calendar days when any of the following occurs:

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- a) The equipment or furniture is no longer needed by the Second party and is available for surplus;
- b) The contract is terminated; or
- c) The contract period ends and will not be renewed.

Upon receipt of the B-217, the Agency's property officer shall review the fixed asset information and advise if the disposal method requested is approved. If the item(s) were purchased by federal funds, any funds received from the sale of the equipment having an acquisition cost of \$5,000 or more, must be credited against the appropriate federal grant.

As soon as possible, but no later than five (5) business days of terminating this contract for any reason, the Second Party shall deliver to CHFS a complete and current inventory, including the information referenced in Section 4.34, of any and all of the Cabinet's equipment and furniture in its possession, custody, or control. Within thirty (30) business days of the contract expiration/termination date, the Second Party shall return or make available any equipment and/or furniture.

Refer to both the CHFS 117 and 217 forms can be obtained by contacting your Property Officer.

4.36—Maintenance of Insurance

During the term of this Contract, the Second Party shall maintain and shall require any Subcontractor to maintain their directors and officers liability insurance, workers' compensation insurance, employer liability insurance, and such other liability insurance as reasonably necessary in the Second Party's business judgment to provide adequate coverage against losses and liabilities attributable to the respective acts or omissions of the Second Party and the Subcontractor(s) in the performance of this Contract. The Second Party shall provide or cause to be provided and shall require any Subcontractor to provide or cause to be provided evidence of such coverage upon request.

To the extent that the Second Party and any Subcontractor is not self-insured, each shall, in any event, name CHFS as an additional insured on any policy of coverage, with the exception of the workers compensation and any reinsurance. The Second Party and any Subcontractor shall notify CHFS of the evidence of insurance coverage within five (5) business days of coverage. Notice shall be sent in writing to the Cabinet for Health and Family Services, Department for Public Health, 275 East Main Street HS1WC, Frankfort, KY 40621

CHFS shall not be responsible for any premiums or assessments on the policy or policies held by the Second Party or any Subcontractor under this Contract. CHFS may, at its sole option, pay one or more premiums, if it decides that to do so would be in the best interest of the Cabinet. Should CHFS exercise this option, it shall be fully reimbursed by the Second Party, either by Second Party directly or by an offset against future payments.

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The Certificate of Insurance for any policy other than self-insurance or any reinsurance must require that the insurer shall not cancel the coverage without thirty (30) days prior written notice to CHFS.

Second Party shall notify CHFS within five (5) business days of any cancellation or interruption of Second Party or Subcontractor's insurance coverage. CHFS shall require in any subcontracts that the Subcontractor provide such notice within five (5) business days the Second Party and CHFS. Second Party shall assure and require that any Subcontractor assure that insurance is in effect at all times during the life of this Contract. If their respective insurance coverage expires at any time during the term of this Contract, the Second Party and any Subcontractor shall provide at least thirty (30) calendar days prior to the expiration date, to the extent possible, a new Certificate of Insurance evidencing coverage as provided herein for not less than the remainder of the term of this Contract.

4.37—Research Project Approval and Institutional Review Board Requirements

Any proposed research project undertaken pursuant to the terms and conditions of this agreement that involves human subjects shall be approved by the Cabinet for Health and Family Services Institution Review Board (CHFS IRB) prior to involving any human subjects or their records, in accordance with 920.KAR 1:060.

4.38—Scientific Misconduct

The Second Party shall set out a procedure for the inquiry, investigation, appeal, and disposition of complaints alleging misconduct in activities involving any and all research projects funded, in whole or in part, with federal funds included in this Contract, and as authorized under the Public Health Services research grants. Such policies and procedures shall be in accordance with the provisions of 42 CFR 50.101 to 50.104 and 900 KAR 1:080 as amended, and shall be made available, upon request, to the Cabinet for Health and Family Services. The Second Party shall immediately report to CHFS any activity reported to the Second Party under these terms and conditions. Notice shall be sent in writing to the Cabinet for Health and Family Services, Department for Public Health, 275 East Main Street HS1WC, Frankfort, KY 40621

4.39—Intellectual Property

The Second Party agrees that any formulae, methodology, other reports and compilations of data provided by CHFS to the Second Party for the purposes of meeting the terms and conditions of this Contract shall be the exclusive property of the Cabinet, unless the specific ownership of any proposed or developed formulae, methodology or data compilation analyses is otherwise identified in any Attachment(s). The Second Party further agrees that any formulae, methodology, other reports and compilations of data prepared or produced by the Second Party during the course of work pursuant to this Contract shall be made available to CHFS for the Cabinet's use upon request and without charge. Any use of these material, formulae, methodology, other

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reports, and compilations of data other than for the purposes of meeting the terms and conditions of this Contract must be reviewed and approved in advance by CHFS.

If any of these materials are included in any publication, training materials or presentations, or for any other type of release of this material other than for the purposes of meeting the terms and conditions of this Contract, appropriate credit for the funding source must be given. This provision shall be included in any subcontract, including contracting for staff, issued by the Second Party under this Contract.

Any proposed project under the scope of work for any of the Projects set forth under the Summary Line Item Section in this Contract shall include specific documentation and justification for titles of ownership as:

- a) Patents;
- b) Trademarks as proposed or registered with the U. S. Patent and Trademark Office; or
- c) Copyrights proposed or certified with the Library of Congress, U.S. Copyright Office.

4.40—Provisions for Termination

The Contract shall be subject to the termination provisions set forth in 200 KAR 5:312.

This Contract may be terminated:

- a) If the Second Party is in default of its contractual obligations, after the Commonwealth has provided the Second Party written notice of the identified deficiencies and a specified time to cure;
- b) For convenience of the Commonwealth by providing the Second Party thirty (30) calendar days written notice of termination;
- c) Immediately for cause; or
- d) Upon less than thirty (30) calendar days notice to the Second Party, upon written determination of the Secretary of the Finance and Administration Cabinet, or his designee, for convenience of the Commonwealth.

All termination notices shall be sent certified mail, return receipt requested and in accordance with 200 KAR 5:312.

4.41—Turnover Assistance

Upon receipt of notice of termination of the Contract from CHFS, the Second Party shall provide any turnover assistance reasonably necessary to enable CHFS or its designee to effectively close out the Contract and move the work to another vendor or to perform the work by itself. If the turnover assistance required by CHFS necessitates additional costs to be incurred by the Contractor not covered by the agreement, CHFS will

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reimburse such costs as allowable by funding.

4.42—Remedies for Breach

It is agreed by the Parties that in the event of breach of contract by the Second Party, CHFS may pursue any remedy available to it pursuant to this Contract, or to the provisions of KRS Chapter 45A, or any remedy that is available to it by law. The remedies available to CHFS may be invoked without regard to the existence of any other available remedy, and may include the enforcement of any holdback provision or payment of any specified liquidated damages by the Second Party to CHFS for noncompliance as provided for in this Contract.

4.43—Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, Lower Tier Covered Transactions

The Second Party certifies the following by signing this Contract:

- a) That neither it nor its principals and/or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency;
- b) Where the prospective recipient of federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall submit an explanation in writing to CHFS; and
- c) That should Second Party or its principals, and/or its subcontractors become debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency, it shall immediately by telephone and within five (5) business days in writing notify CHFS of same.

4.44—Licensure, Certification, and Registration

The Second Party shall:

- a) Ensure that each employee under contract or in its employ obtains and maintains all appropriate licenses, registrations, and/or certifications (at all times) necessary to the extent such are required for performance under this Contract;
- b) Ensure that it has readily accessible copies of licenses, registration and/or certifications necessary for each employee under contract or in its employ; and
- c) Produce copies of any employee's license, registration and/or certification at the request of CHFS or the Cabinet's designee.

4.45—Permits, Licenses, Taxes and Commonwealth Registration

The Contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all Federal, State, and local governments in which work under this Contract is performed.

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The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. Additional local registration or license may be required.

The Contractor shall pay any sales, use, and personal property taxes arising out of this Contract and the transaction contemplated hereby. Any other taxes levied upon this Contract, the transaction, or the equipment or services delivered pursuant hereto shall be borne by the Contractor.

4.46—Conflict of Interest Laws and Principles

The Second Party certifies that the Second Party is legally entitled to enter into this Contract with the Commonwealth of Kentucky, and by holding and performing this Contract will not be violating either any conflict of interest statute, KRS 45A.330-45A.340, 45A.990, KRS 164.390, or KRS 11A.040 of the Executive Branch Code of Ethics, relating to the employment of former public servants.

4.47—Campaign Finance (See Exhibit B)

The Second Party certifies that neither he/she nor any member of his/her immediate family having an interest of ten percent (10%) or more in any business entity involved in the performance of this Contract, has contributed more than the amount specified in KRS 121.056 (2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this Contract. The Second Party further swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

4.48—Legal Proceedings

Except as specifically disclosed in writing to CHFS by the Second Party, prior to the date of this Contract, Second Party certifies there are no suits, investigations, or other proceedings pending or threatened against Second Party or any subcontractor which would have a material effect on Second Party's ability to perform under this Contract, or on Subcontractors ability to perform under their respective subcontracts, if applicable. Further, the Second Party shall use its best efforts to notify CHFS within one (1) business day, and in writing within three (3) business days, of all suits, investigations, or other proceedings involving Second Party related to this Contract. The Second Party shall send written notice to the Cabinet for Health and Family Services, Department for Public Health, 275 East Main Street HS1WC, Frankfort, KY 40621

4.49—Certification of Lobbying Activities (See Exhibit A)

Second Party shall disclose any lobbying activities in accordance with Section 1352, Title 31, U. S. Code. The

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Second Party certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

4.50—Discrimination Prohibited (Because of Race, Religion, Color, National Origin, Sex, Age, or Disability)

During the performance of this contract, the Second Party shall:

- a) Not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex or age. The Second Party further agrees to comply with the provisions of the Americans with Disabilities ACT (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The Second Party agrees to provide needed reasonable accommodations upon request. The Second Party shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment without regard to their race, religion, color, national origin, sex, age or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Second Party agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b) In all solicitations or advertisements for employees placed by or on behalf of the Second Party,

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- state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, age or disability.
- c) Send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the Second Party's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Second Party will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.
 - d) Comply with all provisions of Executive Order No. 11246 of September 24, 1965, Equal Employment Opportunity as amended by E.O. 11375, "Amending Executive Order 12246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
 - e) Furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
 - f) Comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and all implementing regulations and executive orders. No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in relation to activities carried out under this contract on the basis of race, color, age, religion, sex, disability or national origin.

If a recipient of Federal Financial assistance, shall comply with Executive Order 13166, Federal Register Volume 65. No.50121, including but not limited to, language providing services to improve access to its programs and activities for persons, who, as a result of their national origin, are limited in their English proficiency ("LEP"). The language services shall:

- a) Be consistent with the general guidance document (LEP Guidance) issued by the Department of Justice which sets forth the compliance standards recipients of Federal financial assistance must follow to ensure that LEP persons have meaningful access to the program's services and activities;
- b) Have a method of identifying LEP individuals; and
- c) Provide language assistance measures (e.g. oral interpretation and written translation services; training of staff; providing notice to LEP persons; monitoring compliance and updating the plan.)

In the event of the Second Party's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Second Party may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked

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as provided in or as otherwise provided by law.

The Second Party shall include the provisions of paragraphs (1) through (7) of Section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each sub-contractor or vendor. The Second Party shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event a Second Party becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Second Party may request the United States to enter into such litigation to protect the interests of the United States.

4.51—Minority Recruitment, Hiring and Reporting Requirements

The Second Party shall maintain and provide documentation, as needed, of its minority recruiting and hiring policies and procedures, and make available, upon request, a report of these activities.

4.52—Violation of Tax and Employment Laws

KRS 45A.485 requires the Second Party to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the Second Party within the previous five (5) year period of the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342. These statutes relate to the state sales and use tax, corporate and utility tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers' compensation insurance laws.

To comply with the provisions of KRS 45A.485, the Second Party shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination. KRS 45A.485 also provides that, for the duration of any contract, the Second Party shall be in continuous compliance with the provisions of those statutes which apply to the Second Party's operations, and that the Second Party's failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and the Second Party's disqualification from eligibility for future state contracts for a period of two (2) years.

The Second Party shall not have violated any of the provisions of the above-referenced statutes within the previous five (5) year period.

4.53—Certification Regarding Drug Free Workplace

The Second Party hereby certifies that it will, or will continue to, provide a drug free workplace in accordance

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with 45 CFR part 82. The Second Party shall at a minimum:

- a) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited from the Second Party's workplace and specifying actions that will be taken against employees for violation of such prohibition;
- b) Establish an ongoing drug free awareness program to inform employees about:
 - 1. The dangers of drug abuse in the workplace;
 - 2. The Second Party's policy of maintaining a drug free workplace;
 - 3. Available drug counseling, rehabilitation and employee assistance programs; and
 - 4. The penalties that may be imposed upon employees for drug abuse violation.

4.54—Confidential Information

The Contractor shall comply with the provisions of the Privacy Act of 1974 and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Commonwealth in writing to the Contractor. The Contractor will comply with all Federal and State Regulations and Statutes related to confidentiality that are applicable to the Contractor. The Contractor shall have an appropriate agreement with its employees to that effect, provided however, that the foregoing will not apply to:

- a) Information which the Commonwealth has released in writing from being maintained in confidence;
- b) Information which at the time of disclosure is in the public domain by having been printed and published and available to the public in libraries or other public places where such data is usually collected; or
- c) Information, which, after disclosure, becomes part of the public domain as defined above, through no act of the Contractor.

The Contractor shall have an appropriate agreement with its Subcontractors extending these confidentiality requirements to all Subcontractors' employees.

4.55—Confidentiality, Confidentiality Agreements and Limitations on Information and Data Use

The Second Party agrees that it and any employee or agent acting on its behalf in providing services under this Contract will abide by the state and federal rules and regulations governing access to and use of information and data provided by CHFS or collected by the Second Party and will use such information or data only for those purposes expressly delineated, defined and authorized in this Contract. In the performance of services under this Contract, the Second Party agrees as follows:

- a) The Second Party shall cause all personnel who may have access to confidential information

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provided by CHFS to enter into CHFS approved confidentiality agreements and shall maintain such confidentiality agreements on file. CHFS reserves the right to direct the removal from contract administration, or the termination of access to CHFS provided information, for any individual covered by this Contract who has not signed a confidentiality agreement.

- b) Any subcontractor, their agent, and any of their employees who enter into any type of agreement to fulfill the requirements of this contractual agreement with the Second Party, must provide written assurances that they and any of their agents will abide by the terms of confidentiality as set forth in this Contract, as well as any federal or state confidentiality agreements which may govern the terms and conditions in this Contract.
- c) Any dissemination of information about projects funded and the scope of work described in the terms and conditions of this Contract, must be fully documented and reviewed by the Cabinet's project manager before any representation, electronic or otherwise, of projects, their funding sources, use of data, or data analyses may be posted to a web page or otherwise published.
- d) The Second Party shall permit unrestricted access on demand to personnel of the Cabinet, the Office of the Attorney General, the Office of the Auditor of Public Accounts, and any representative of a government funding agency authorized to review records for audit or investigation purposes to its current policies and procedures for ensuring compliance with these confidentiality requirements, the confidentiality agreements with its personnel, and subcontractor confidentiality assurances.

4.56—HIPAA Confidentiality Compliance

The Second Party agrees to abide by the "HIPAA Privacy Rule," 45 CFR Parts 160 and 164, established under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (42 USC 1320d) to protect the security, confidentiality, and integrity of health information. The Cabinet, a Covered Entity, and the Second Party, a Business Associate under the HIPAA Privacy Rule. This would include any form of information including paper records, oral communications, audio recordings, electronic displays, etc. In the performance of services under this Agreement, the Second Party agrees to use and disclose Protected Health Information only in accordance with the HIPAA Privacy Rule as follows:

- A. To use or disclose Protected Health Information solely for meeting its obligations under this Agreement or as required by applicable law, rule or regulation, or by accrediting or credentialing organizations to whom the Cabinet or Second Party is required to disclose such information or as otherwise is permitted under this contract, or the HIPAA Privacy Rule;
- B. To implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this contract;
- C. To take reasonable steps to ensure that its employees' actions or omissions do not cause a breach in the terms of the HIPAA Privacy Rule;
- D. To make available Protected Health Information to the extent and in the manner required by Section 164.524, for purposes of accounting of disclosures in accordance with Section 164.528, and for amendment and incorporation of any amendments in accordance with the requirements

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- of Section 164.526 of the HIPAA Privacy Rule;
- E. To ensure that its agents, including subcontractors abide by the same restrictions and conditions concerning Protected Health Information contained in this contract, and that any subcontract entered into contain this requirement;
 - F. To report to the Cabinet any use or disclosure of Protected Health Information of which it becomes aware that is not in compliance with the terms of this contract; and
 - G. To return or destroy copies of all Protected Health Information upon request of the Cabinet or upon termination of this contract. If such return or destruction is not feasible, the Second Party shall extend the protections of this contract to such information and limit further uses and disclosures to those purposes that make its return or destruction not feasible.

Government agencies responsible for HIPAA Privacy Rule compliance and appropriately authorized shall have the right to audit the Second Party's records and practices related to use and disclosure of Protected Health Information to ensure the Cabinet's compliance with the terms of the HIPAA Privacy Rule. In the event that either party to this contract believes that any provision fails to comply with the then current requirements of the HIPAA Privacy Rule, such party shall notify the other party in writing. For a period of up to thirty days, the parties shall address in good faith such concern and amend the terms of this contract, if necessary, to bring it into compliance. If, after such thirty-day period, the contract fails to comply with the HIPAA Privacy Rule, then either party has the right to terminate upon written notice to the other party.

4.57—Governing Law and Regulations

All questions as to the execution, validity, interpretation and performance of this Contract shall be governed by the laws of the Commonwealth. Furthermore, the parties hereto agree that any legal action which is brought on the basis of this Contract shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

Section 5— Standard Terms and Conditions for Contracts and Grants Using ARRA Funds

To the extent that this contract or grant involves the use of American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 ("ARRA") funds, the following terms and conditions apply. As used in this Section, "Contractor/Grantee" means the contractor or grantee receiving ARRA funds from the Commonwealth of Kentucky ("Commonwealth") under this agreement.

1. The Contractor/Grantee specifically agrees to comply with each of the terms and conditions contained herein.
2. Contractor/Grantee understands and acknowledges that the federal stimulus process is still evolving and that new requirements for ARRA compliance may still be forthcoming from federal government and

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the Commonwealth of Kentucky. Accordingly, Contractor/Grantee specifically agrees that both it and subcontractors/subgrantees will comply with all such requirements during the contract period.

5.01—Availability of Funding

Contractor/Grantee agrees that programs supported with temporary federal funds made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, will not be continued with state financed appropriations once the temporary federal funds are expended.

5.02—Buy American Requirement

Contractor/Grantee agrees that in accordance with ARRA, Section 1605, neither Contractor/Grantee or its subcontractors/subgrantees will use ARRA funds for a project for the construction, alternation, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The Contractor/Grantee understands that this requirement may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.

5.03—Conflicting Requirements

Contractor/Grantee agrees that, to the extent ARRA requirements conflict with Commonwealth of Kentucky requirements, the ARRA requirements shall control.

5.04—False Claims Act

Contractor/Grantee agrees that it shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subgrantee, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

5.05—Enforceability

Contractor/Grantee agrees that if Contractor/Grantee or one of its subcontractors/subgrantees fails to comply with all applicable federal and state requirements governing the use of ARRA funds, the Commonwealth of Kentucky may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the Commonwealth of Kentucky under all applicable state and federal laws.

5.06—Inspection of Records

Contractor/Grantee agrees that it shall permit the United States Comptroller General or his representative or

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the appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this contract; and (2) interview any officer or employee of Contractor/Grantee or any of its subcontractors/subgrantees regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

5.07—Job Posting Requirements

Section 1512 of the ARRA requires states receiving stimulus funds to report on jobs created and retained as a result of the stimulus funds. Contractors/Grantees who receive ARRA funded contracts are required to post jobs created and retained as a result of stimulus funds on the Commonwealth of Kentucky Job Bank at: <https://e3.ky.gov/>

5.08—Prohibition on Use of ARRA Funds

Contractor/Grantee agrees that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, swimming pools, or similar projects.

5.09—Reporting Requirements

Pursuant to Section 1512 of the ARRA, state agencies receiving ARRA funds must submit a report to the federal government no later than ten (10) calendar days after the end of each calendar quarter. This report must contain the information outlined below.

Accordingly, Contractor/Grantee agrees to provide the Commonwealth with the following information in a timely manner:

- a. The total amount of ARRA funds received by Contractor/Grantee during the Reporting Period;
- b. The amount of ARRA funds that were expended or obligated during the Reporting Period;
- c. A detailed list of all projects or activities for which ARRA funds were expending or obligated, including:
 - i. the name of the project or activity;
 - ii. a description of the project or activity;
 - iii. an evaluation of the completion status of the project or activity; and
 - iv. an estimate of the number of jobs created and the number of jobs retained by the project or activity;
- d. For any subcontracts or subgrants equal to or greater than \$25,000:
 - i. The name of the entity receiving the subaward;
 - ii. The amount of the subaward;
 - iii. The transaction type;
 - iv. The North American Industry Classification System (NAICS) code or
 - v. Catalog of Federal Domestic Assistance (CFDA) number;

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- vi. Program source;
 - vii. An award title descriptive of the purpose of each funding action;
 - viii. The location of the entity receiving the subaward;
 - ix. The primary location of the subaward, including the city, state, congressional district and country; and
 - x. A unique identifier of the entity receiving the sub-award and the parent entity of Contractor/Grantee, should the entity be owned by another.
 - xi. The names and total compensation of the five most highly compensated officers of the company if it received: 1) 80% or more of its annual gross revenues in Federal awards; and 2) \$25M or more in annual gross revenue from Federal awards.
- e. For any subcontracts or subgrants of less than \$25,000 or to individuals, the information required in 4 may be reported in the aggregate and requires the certification of an authorized officer of Contractor/Grantee that the information contained in the report is accurate.
- f. Any other information reasonably requested by the Commonwealth or required by state or federal law or regulation.

Standard data elements and federal instructions for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at www.FederalReporting.gov.

5.10—Segregation of Funds

Contractor/Grantee agrees that it shall segregate obligations and expenditures of Recovery Act funds from other funding. No part of funds made available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be comingled with any other funds or used for a purpose other than that of making payments for costs allowable under the ARRA.

5.11—Subrecipient Requirements

Contractor/Grantee agrees that it shall include these standard terms and conditions, including this requirement, in any of its subcontracts or subgrants in connection with projects funded in whole or in part with funds available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

5.12—Wage Requirements

Contractor/Grantee agrees that, in accordance with Section 1606 of the ARRA, both it and its subcontractors shall fully comply with this section in that, notwithstanding any other provision of law, and in a manner consistent with the other provisions of the ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded in whole or in part with funds available under the ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality, as determined by the

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United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. The Secretary of Labor's determination regarding the prevailing wages applicable in the Commonwealth of Kentucky are located at: <http://www.gpo.gov/davisbacon/ky.html>

5.13—Whistleblower Protection

Contractor/Grantee agrees that both it and its subcontractors/subgrantees shall comply with Section 1553 of the ARRA, which prohibits all non-federal Contractor/Grantees of ARRA funds, including the Commonwealth of Kentucky, and all contractors and grantees of the Commonwealth of Kentucky, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of (1) gross mismanagement of a contract or grant relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds. Contractor/Grantee agrees that it and its subcontractors/subgrantees shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

Exhibit A

Rev 26 Mar 03	
<p align="center">KRS 45A.485 CERTIFICATION FORM Commonwealth of Kentucky</p> <p align="center">Finance and Administration Cabinet</p> <p align="center">Sworn Statement Regarding Violations of</p>	

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**Cost/Budget Form
Adanta Group
Point of Entry Services
July 1, 2008 – June 30, 2009**

Personnel:	\$203,000
Salaries - \$160,000	
Fringe - \$43,000	
 Travel/Training	 \$ 10,000
 Program support	 \$ 5,000
 AARP	 \$17,500
 Other:	 <u>\$ 25,000</u>

Total Contract Amount: \$260,500

Monthly invoices are to be submitted to: DPH/ACHI/First Steps Program, 275 East Main Street, HS2W-C, Frankfort, KY 40621. ATTN: Sarah Walker

Method of Payment: Payment by the Cabinet to the Second Party shall be made only after receipt of appropriate, accurate, and acceptable invoices submitted to the Cabinet by the Second Party in the manner prescribed by the Cabinet.